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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,880

10/12/2006

John Frankhuisen

784-107

9171

30448

7590

06/26/2008

AKERMAN SENTERFITT

P.O. BOX 3188

WEST PALM BEACH, FL 33402-3188

EXAMINER

WOOD, ELLEN S

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,880	<b>Applicant(s)</b> FRANKHUISEN, JOHN	
	<b>Examiner</b> ELLEN S. WOOD	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/12/2005</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### *Claim Objections*

1. Claim 4 is objected to because of the following informalities: the claim states ***“wherein the outer layer is secured to the outer layer by a permanent adhesive”*** the examiner believes that one of the outer layers is to be replaced by the under layer. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1- 8, 10-11 and 15 rejected under 35 U.S.C. 102(b) as being anticipated by Keller et al. (US 5,691,043, hereinafter "Keller").

In regards to claim 1, Keller discloses a labeling laminate (col. 1 lines 51-54). The label has a core layer (under layer) and at least one skin layer (outer layer) adjacent to said core layer (col. 3 lines 10-13). The core layer may be opaque (col. 7 lines 31-32). The film is a heat shrink film that is passed through a hot water shrink tunnel and retains the characteristics of film (col. 1 lines 21-26), thus it would be inherent that the opaqueness of the film is retained. The examiner notes that the term ***“susceptible”*** is not a limiting term within the claim. The term is used to show that the under layer will remain opaque wherein the top layer may or may not lose opaqueness

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depending on the conditions in which are intended for the label. Thus, the limiting condition in the claim is that the under layer remains opaque when wet.

In regards to claim 2, Keller discloses the skin layer is adhered to the base layer by means of coextrusion (col. 9 lines 4-5). The core layer is polypropylene, which is a plastics material (col. 4 line 42).

In regards to claim 3, Keller discloses that the core layer is a white opaque material (col. 7 lines 23-24).

In regards to claims 4 and 15, Keller discloses the skin layer is adhered to the base layer by means of coextrusion (col. 9 lines 4-5), thus a permanent adhesive.

In regards to claim 5, Keller discloses that the core layer must provide sufficient operability in order for the film to be orientated without tearing (col. 4 lines 42-47), thus a stable laminate base.

In regards to claims 6-8, Keller discloses shrinking a label of heat shrinkable material over a bottle (col. 1 lines 57-61). Thus, the inner layer is adapted to adhere to the outer surface of a container. The label is heat shrunk to the container, thus is self-adhered, because there is no use of an adhesive used to apply the label to the bottle.

In regards to claim 10, Keller discloses that the core layer can be formed from a mixture of polypropylene and polyethylene (col. 6 lines 13-16).

In regards to claim 11, Keller discloses that the core layer is biaxially oriented polypropylene (col. 5 lines 1-5).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 12-14 and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al. (US 5,691,043, hereinafter "Keller").

Keller discloses the laminate construction of a label as disclosed in the previous section.

In regards to claim 13, Keller discloses a highly opaque five layer structure as the core layer (col. 7 lines 30-32).

In regards to claim 14, Keller discloses that the five layer structure comprises a core layer that is cavitated (col. 7 lines 15-27).

Keller is silent with regards to the opaqueness of the plastic and the printing of the outermost layer.

It would be obvious that a bottle would be glass because the heat tunnel temperatures are about 135°C (col. 10 lines 46-52), which would most likely melt most plastic bottles but glass would retain its shape.

In regards to claim 12, it would be obvious to one of ordinary skill in the art that a highly opaque biaxially oriented polypropylene plastic (col. 7 lines 31-32) as disclosed by Keller would have a opaqueness greater than 0.54 and would be discovered by routine experimentation.

In regards to claims 16-22, Keller discloses that the skin layer may be treated in a known and conventional manner, e.g., by corona discharge to improve its receptivity to printing inks and coatings (col. 8-9 lines 65-67 and line 1). The label has a core layer (under layer) and at least one skin layer (outer layer) adjacent to said core layer (col. 3 lines 10-13). The core layer may be opaque (col. 7 lines 31-32). The film is a heat shrink film that is passed through a hot water shrink tunnel and retains the characteristics of film (col. 1 lines 21-26), thus it would be inherent that the opaqueness of the film is retained and is water insoluble. The skin layer is adhered to the base layer by means of coextrusion (fusion) (col. 9 lines 4-5), thus the materials are laminated to each other by insoluble means. The label is heat shrunk over a bottle (col. 1 lines 57-61). shrinking a label of heat shrinkable material over a bottle (col. 1 lines 57-61). Thus, the inner layer is adapted to adhere to the outer surface of a container.

It would be obvious to one of ordinary skill in the art to incorporate printed indicia to the outermost layer of the label disclosed by Keller because the outermost layer of the label is treated in order to improve the receptivity of printing inks.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on Monday-Friday 7-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ellen S Wood/  
Examiner  
Art Unit 1794

/Carol Chaney/  
Supervisory Patent Examiner, Art Unit 1794